EDITOR'S NOTE

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87-266

No. _____

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

ROSE MARTELLI,

PETITIONER,

v.

GUIDO MARTELLI and
ANTHONY J. MARTELLI,

RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

ROSE MARTELLI
Petitioner Pro Se
365 West 20th Street
New York, New York 10011
Telephone: (212) 242-6595

QUESTION PRESENTED FOR REVIEW

Whether the denial of Petitioner's request to stay the sale of real estate belonging to the estate of her mother deprived Petitioner of her opportunity to obtain such real estate in violation of her rights under the United States Constitution; thereby requiring the voiding and rescission of such sale?

IN THE

SUPREME COURT OF THE UNITED STATES

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ROSE MARTELLI,

PETITIONER,

v.

GUIDO MARTELLI and
ANTHONY J. MARTELLI,

RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

The petitioner, Rose Martelli, respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of Pennsylvania entered on December 11, 1986.

TABLE OF CONTENTS

Item	Page
Table of Authorities	4
Opinion Below.	5
Jurisdiction	5
Constitutional Provision Involved. . .	5
Statement of the Case.	6
Reason for Allowing the Writ	10
Conclusion	14
Appendices A - D	15

TABLE OF AUTHORITIES

Authority	Page
U.S. Constitution, Amendment XIV	5
Pennsylvania Probate, Estates and Fiduciaries Code, 20 Pa. C.S.A. Section 3353	7
20 Pa. C.S.A. Section 3534	8
Bedford v. United States, 192 U.S. 217 (1904)	13
Bell v. Burson, 402 U.S. 535 (1971)	13
Goldberg v. Kelly, 397 U.S. 254 (1970)	13
In re Murchison, 349 U.S. 133 (1965)	13
Matthews v. Eldrige, 424 U.S. 319 (1976)	13
Peabody v. United States, 231 U.S. 530 (1913)	13
Snaidach v. Family Finance Corp., 395 U.S. 337 (1969)	13
Withrow v. Larkin, 421 U.S. 35 (1975)	13

OPINION BELOW

The Supreme Court of Pennsylvania entered its Memorandum Decision affirming the denial of Petitioner's motion for a stay of the sale of real estate in her mother's estate on December 11, 1986. A copy of the decision is attached as Appendix A.

JURISDICTION

On December 11, 1986 the Supreme Court of Pennsylvania entered its Memorandum Decision affirming the denial of Petitioner's motion for a stay of the sale of real estate in her mother's estate (Appendix A). The jurisdiction of this honorable Court is invoked under Title 28, United States Code, Section 1257(3).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment XIV:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the

United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF THE CASE

Petitioner Rose Martelli is a single woman, over the age of fifty years and legally blind. This proceeding concerns Petitioner's disenfranchisement by her two brothers, Guido and Anthony Martelli, Respondents, from her equal one-third intestate share of the estate of her late mother, Angelina Martelli, who died in May 1980. The Respondents have been acting as co-administrators of their mother's estate since July 21, 1980 pursuant to their nomination in an instrument executed by the

mother on February 8, 1980 that was admitted to probate by the probate court of Chester County, Pennsylvania. The instrument merely nominated the Respondents as administrators but made no substantive property dispositions. During this seven year period 1980 - 1987 the Respondents have effectively disenfranchised their sister, the Petitioner, from her mother's estate by failing to provide Petitioner with an estate inventory, an estate audit, proper estate tax returns, estate accountings or any estate distributions of income or principal.

The disenfranchisement of the Petitioner climaxed when the Respondents sought to sell real property located at 501 Beechwood Drive, Kennett Square, Pennsylvania, pursuant to 20 Pa. C.S.A. Section 3353 of the Pennsylvania Probate, Estates and Fiduciaries Code, which real estate Petitioner desired to purchase for

her residence or take as a distribution in kind under the Pennsylvania Probate Code, 20 Pa. C.S.A. Section 3534. Petitioner believes that her late mother intended for her to inherit and occupy the said real estate.

After an unsuccessful attempt by the Respondents to sell the subject property against the wishes of the Petitioner in early 1986 the Respondents entered into a contract of sale for the subject premises scheduled for closing on December 8, 1986.

On December 8, 1986, in response to Petitioner's complaint to judicially restrain the sale of the said real estate, filed December 1, 1986, the Court of Common Pleas of Chester County, Pennsylvania, Orphan's Court Division, restrained the closing scheduled for December 8, 1986 only if the Petitioner procured a surety bond in the amount of $175,000, the apparent

sale price of the said real estate (a copy of the Court's order is contained in Appendix B). Petitioner then filed an application in Superior Court, Philadelphia, Pennsylvania, for immediate review of the aforesaid order of the Court of Common Pleas, alleging deprivation by that court of her property rights without due process and denial of equal protection. The Superior Court treated Petitioner's application as a Motion for a Stay, and denied it on December 8, 1986 (a copy of that court's order is contained in Appendix C). Petitioner thereupon the same day petitioned the Supreme Court of Pennsylvania for immediate review of the denial by the Superior Court, which petition was dismissed as moot on December 11, 1986 inasmuch as the closing of the real estate transaction apparently had already occurred on December 8, 1986 (a copy of the Supreme Court order is contained in Appendix A).

The Petitioner thereafter applied to the United States Supreme Court for an order Extending the Time to File a Petition for a Writ of Certiorari, which order was signed by Justice William Brennan, Jr. on March 12, 1987 extending the time to file to and including Sunday, May 10, 1987 (a copy of the order is contained in Appendix D).

REASON FOR GRANTING THE WRIT

The actions of the courts of Pennsylvania in permitting the sale of the aforesaid real estate, which Petitioner wished to inhabit as her permanent residence, effectively deprived the Petitioner of an opportunity to fairly obtain the said real estate either as a distribution in kind from her late mother's estate or to bid on and purchase the said property from the estate at fair market value. The sale procedure deprived Petitioner of property rights without due process of law. The remedy offered

Petitioner, a blind woman, by the Court of Common Pleas, on Thursday, December 4, 1986, to post a surety bond equal in value to the full fair market value of the real estate, $175,000, by Monday, December 8, 1986 placed an impossible burden upon the Petitioner to stop the sale of the real estate by requiring her to procure an exorbitant surety bond over a weekend. The subject property was free and clear of any mortgages or liens in the estate of Petitioner's mother, and the Respondents did not evidence any need to sell the subject property to raise funds for the estate. In contrast, Respondents ramrodding of the sale through the courts of Pennsylvania was a spiteful and vindictive effort to deprive Petitioner of her opportunity to purchase the property or take the same as a distribution in kind, after Respondents had earlier deprived Petitioner of physical use of the premises through ejectment proceedings against her in the Pennsylvania courts.

Petitioner specifically alleges that the Pennsylvania state court proceedings relative to the sale of the said real estate violated procedural and substantive due process and equal protection under the Fourteenth Amendment to the United States Constitution by depriving her of the timely opportunity to obtain impartial counsel to act in her best interests, depriving her of appropriate stay remedies and proper appellate review and procedures, exercisable in a timely fashion before any claim of injury or deprivation became moot, and depriving her of a full hearing on the merits.

The essential procedural guarantee of the due process clause is that of fairness. The procedure must be fundamentally fair to the individual in the resolution of the factual and legal basis for government actions that deprive him of life, liberty or property. The requirement applies to courts

and judges as well. In re Murchison, 349 U.S. 133 (1965); Withrow v. Larkin, 421 U.S. 35 (1975). The affected individual must have a right to a fair hearing before his property rights are taken away. Snaidach v. Family Finance Corp., 395 U.S. 337 (1969); Bell v. Burson, 402 U.S. 535 (1971); Goldberg v. Kelly, 397 U.S. 254 (1970); Matthews v. Eldrige, 424 U.S. 319 (1976). Clearly, the summary actions of the state courts of Pennsylvania deprived the Petitioner of her rights to procedural due process. In addition, the action of the State Courts of Pennsylvania could be construed to work a "taking" of Petitioner's property rights in violation of her constitutional rights to substantive due process. Bedford v. United States, 192 U.S. 217 (1904); Peabody v. United States, 231 U.S. 530 (1913).

The Petitioner respectfully submits that justice requires a reversal of

the decision of the Supreme Court of Pennsylvania and rescission of the sale of the aforesaid real estate so that the Petitioner may fairly have the opportunity to purchase or take the same as a distribution in kind from her late mother's estate.

CONCLUSION

For the foregoing reasons Petitioner Rose Martelli respectfully requests that a writ of certiorari issue to review the judgment of the Supreme Court of Pennsylvania.

Respectfully submitted,

ROSE MARTELLI
Petitioner Pro Se
305 West 20th Street
New York, New York 10011
Telephone (212) 242-6595

DATED: May 11, 1987

IN THE SUPREME COURT OF PENNSYLVANIA
Eastern District

ROSE MARTELLI	:	No.285 E. D. Misc. Dkt.
	:	1986
	:	
v.	:	
	:	
GUIDO R. MARTELLI	:	
ANTHONY J. MARTELLI	:	

O R D E R

AND NOW, this 11th day of December, 1986, the petition requesting review by this Court of the Order of the Superior Court entered on December 8, 1986, denying a motion for stay, is dismissed as moot, it appearing that the action sought to be stayed had transpired prior to the filing of this petition in this Court.

/s/ Robert N.C. Nix
Chief Justice

TRUE COPY FROM THE RECORD
Attest: Dec: 15, 1986

/s/ Patrick Tassos
Patrick Tassos
Deputy Prothonotary
Supreme Court of Pennsylvania

IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

ESTATE OF ANGELINA MARTELLI, Deceased
No. 739-1980

O R D E R

AND NOW, this 4th day of December, 1986, having been informed of a pending sale of the premises at 501 Beechwood Drive, Kennett Square, upon application of Rose Martelli (filed with the Prothonotary at No. 86-08545), I restrain said sale subject to further Order of the Court if and only if Rose Martelli shall first file with this Court a bond, with the surety to be approved by the Court, in the amount of 175,000, on the condition that if the stay shall be found to have been improvidently entered, the Estate and the prospective buyers shall be compensated for whatever loss they may suffer.

FROM THE RECORD
ATTEST
/s/ Eileen E. Piatkowski
Ass't. Clerk of the Orphans' Court
Division of the Court of Common Pleas of
Chester County, Pa. 12/5/81

BY THE COURT:
/s/ Lawrence Wood

SUPERIOR COURT OF PENNSYLVANIA
Philadelphia District

Estate of:	:	NO.104 Miscellaneous
ANGELINA MARTELLI,	:	Docket No. 15
Deceased	:	
	:	
PETITION OF:	:	C.P. Orphans' Court,
ROSE MARTELLI	:	Chester County,
		No. 739-1980
ROSE MARTELLI	:	
	:	
v.	:	C.P. Civil Action-Law,
	:	Chester County,
GUIDO R. MARTELLI	:	No. 86-08545
and	:	
ANTHONY J. MARTELLI:		

O R D E R

AND NOW, this 8th day of December, 1986, Motion for Stay is denied.

Per Curiam

Supreme Court of the United States

No. A-665

ROSE MARTELLI,
Applicant,

v.

GUIDO MARTELLI, ET AL.

ORDER EXTENDING THE TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of applicant,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including May 10, 1987.

/s/ William J. Brennan, Jr.
Associate Justice of the Supreme Court of the United States

Dated this 12th

day of March, 1987.